No. 87-210

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

JOHN L. PRICE,
Petitioner,

V.

PATRICK W. WARNECKE,
Respondent.

PETITION FOR WRIT OF CERTIORARI

to the United States Court of Appeals
for the Ninth Circuit

JOHN L. PRICE (PRO SE)
8276 HUFFINE LANE
BOZEMAN, MONTANA 59715
(406) 586-2713

163pp

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. If a federal appeals court contumaciously refuses to address the issue of JUDICIAL MALFEASANCE (especially when called upon to take judicial notice of its occurrence), is this court-sanctioned silence in the matter sufficient to support the petitioner's contention that his constitutional right to due process has been violated?

2. How can an appeals court (whose business it is to deal with all sorts of criminality and corruptive activity in the nation at large), capriciously choose to overlook the skulduggery and malfeasance that has prevailed within the court system itself, and evade the responsibility of dealing with it as though it did not exist?

Under date of May 19, 1987, the questions, above, were presented to the 9th circuit judges in the form of a challenge to cite the law (or mandate) which gives the court the right or prerogative to not address the issue of JUDICIAL MALFEASANCE. (appendix 57a, 58a, 59a).

To date, no response has been received to the challenge, and petitioner can reasonably assume that none will be forthcoming.

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Estelle v. Gamble, 429 U.S. 97, 104 (1976).

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STATUTES

42 U.S.C. Section 1983.

28 U.S.C. Section 1343.

REPORT ON CORRECTIONS (one of SIX reports of the National Advisory on Criminal Justice Standards and Goals dated Washington, D.C., January 23, 1973, pages 31-37, Standard 2-4, Standard 2-6.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

JOHN L. PRICE,

Petitioner,

V.

PATRICK W. WARNECKE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Petitioner, JOHN L. PRICE, respectfully requests that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on May 2, 1986 (appendix 2a, 3a, 4a).

Petitioner/plaintiff's appeal to the Ninth Circuit Appeals Court had been for <u>reversal</u> of the lower court's judgment; not affirmation.

JUDGMENTS BELOW

	APPENDIX
The District Court awarded summary judgment in favor of the defendants by the court's ORDER of 6-17-85.	1a and supplement
The judgments by the Appeals Court were rendered by:	
The court's MEMORANDUM* of 5-2-86.	2a - 4a
The court's ORDER of 12-30-86.	33a
The court's ORDER of 4-9-87.	41a
The court's ORDER of 5-7-87.	56a

JURISDICTION

The Appeals Court, on April 9, 1987, denied appellant's petition for rehearing and rejected the suggestion for rehearing en banc (appendix 41a).

This petition for writ of certiorari is being filed within 90 days of that date, plus the 21 days allowed (from July 9, 1987) by Rule 33.7 due to the petition being returned to petitioner for correction, and later for double-spacing in lieu of the space-and-a-half composition that was dated July 24, 1987. (See appendix 60a, 61a).

The jurisdiction of this Court to review the judgment of the Appeals Court on issue of writ of certiorari is mandated by 28 U.S.C. §§1651(a), 2241.

STATEMENT OF THE CASE

At the outset, petitioner wishes to emphasize that he is proceeding PRO SE, and, while this document as a whole may not be as well lawyerized as the Court is accustomed to, petitioner will make every conceivable effort to present his case in understandable language, format and continuity.

Petitioner alleges that both the District Court and the Appeals Court violated the plaintiff/appellant's constitutional right to due process by committing acts of JUDICIAL MALFEASANCE, which wrongfully led to the unjudicious judgments that were rendered, causing unjustifiable harm to the plaintiff/appellant.

The high court is requested to consider petitioner's premise that a matter of justice is at stake, necessitating reversal of the judgments of the courts below.

Petitioner does not lay claim to any special privileges or treatment. He is a native citizen of the United States (despite having once been incarcerated), and is entitled by constitutional right to have access to the courts, and the constitutional right to due process, fairly and squarely administered without prejudice.

In positive terms: Petitioner concludes that neither the District Court nor the Appeals Court performed correctly, judiciously, legally, competently, scrupulously or lawfully. It has now become a matter for the United States Supreme Court to settle.

- - - - - - - - - - - - - - - - -

The lawsuit in District Court amounts to allegations against officials of the Montana State Prison of deliberate indifference to prisoner's needs for dental treatment and care.

The case was filed in District Court on September 23, 1981. On July 17, 1985, the U. S. District Judge (W. D. Murray) approved the findings and recommendation of the U. S. Magistrate, granting

summary judgment in favor of the defendants (appendix 1a and supplement). Note the time-span: 9-23-81 to 7-17-85.

Plaintiff appealed to the U. S. Court of Appeals for the Ninth Circuit.

Appeals Court panel of 3 judges affirmed lower court's judgment. Panel eventually granted motion for rehearing with suggestion for rehearing en banc (appendix 2a, 3a, 4a, 33a).

Appeals Court panel, on April 9, 1987, denied the petition for rehearing and rejected the suggestion for rehearing en banc (appendix 41a).

Petitioner believes that the Supreme Court can best act on whether or not to issue the writ of certiorari by reviewing (in whole) the appellant's PETITION FOR REHEARING dated February 3, 1987 (appendix 37a):

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA (Cause No. CV 81-91-BU-WDM)

This petition for rehearing emanates from the following 9th Circuit court documents:

1. Court ORDER filed under date of January 26, 1987.
2. Court ORDER filed under date of December 30, 1986.

   NOTE that in this document the appellant's name is mis-spelled as "PIERCE."

   NOTE that this document carries the suggestion for rehearing en banc.

Petitioner hereby acquiesces to rehearing by a LIMITED EN BANC court as provided in 9th Circuit Rule 25.

Petitioner will now proceed with reference to the following documents, to present the arguments contained in the ensuing POINT-BY-POINT discussion:

1. The (MODIFIED) BRIEF OF APPELLANT dated December 13, 1985.
2. Appellant's EXCERPT OF RECORD dated November 13, 1985.
3. Appeals Court MEMORANDUM* judgment filed under date of May 2, 1986.

POINT 1. Probably the most significant factor of this petition is centered in reference 3, above, in which the document singled-out ONE aspect of the case to conclude ("that he saw a prison dentist on at least five occasions ...."), and with this as a criteria the appeals court judges erroneously assumed that "Price had been adequately treated." Then, with this assumption, went on to find that ("Price's claims represent a difference of opinion between the type of treatment he preferred and what he received."). And it was obviously this misconstruing of the treatment process which caused the judges to favor the institution and eventually affirm the lower court's judgment (which also had erroneously been led to believe that the treatment given to Price was adequate and properly administered).

In fact, it was the lower court's deliberate act of improperly (and with bias) covering for the institution that brought about the whole unjudicial mess of the appeals process — which, in the appellant's opinion, could have been avoided if the three circuit judges (Sneed, Alarcon and

Noonan) had thoroughly consulted the case file for the evidence contained therein relative to what treatment was given to Price during those five visits to the prison dentist from June to October, 1981, and how that treatment was administered.

The defendants' attorney (institutions lawyer Nick Rotering) siezed upon this "five visits to the prison dentist" aspect to wrongfully influence the U. S. Magistrate who conducted the hearings. Rotering cited the INTERROGATORIES, asserting that "By his own admission, the plaintiff has stated that he saw the dentist five times," then led the magistrate to believe that Price had been adequately treated.

The plaintiff/appellant did see through Rotering's clever strategy. And it was because of this that plaintiff submitted several pages of EXCERPTS from the plaintiff's diary/journal. These pages are a part of appellant's EXCERPT OF RECORD dated November 13, 1985 — see pages 49-56.

THESE DIARY/JOURNAL EXCERPTS EXPLAINS IN DETAIL THE FLOW OF EVENTS REGARDING PLAINTIFF'S DENTAL TREATMENT FROM 6-8-81 to 10-22-81.

The court is requested to consider a factor of exceptional importance; which is, simply, that throughout the entire proceedings in district court, the defendants presented no defense whatsoever — either on their own initiative or through the institutions lawyer who represented them. Neither did they refute any evidence presented by the plaintiff. Consequently, there are no material facts generated by the defense to render ineffective the evidentiary documents produced by the plaintiff to prove his case against the defendants.

The plaintiff's diary/journal EXCERPTS were never challenged, either in open court or by affidavit. Consequently, the EXCERPTS documentary must stand and be treated as accurate, unchallenged, and unrefuted evidence to prove the allegation of "deliberate indifference to a peisoner's serious illness or injury." This allegation simply cannot be judiciously regarded as some kind of a whim of

the plaintiff amounting to a "difference of opinion."

POINT 2. The court's attention is invited to pages 67-73 of plaintiff's EXCERPT OF RECORD. These pages recapitulate the events of the litigation at district court level over a period of three and one-half years! — clearly depicting one stumbling block after another to discourage plaintiff from the pursuance of his constitutional right to due process.

This amounts to much more than an "inference" of judicial skulduggery — it is OVERWHELMING EVIDENCE that the officiating magistrate fully intended (from beginning to end) to scuttle the plaintiff regardless of what came forth.

And if the magistrate might somehow attempt to interject his "judicial integrity" into the record, the court is reminded that Magistrate Shanstrom has a long record of interjecting his own personal curlycues into his court affairs when he was a district judge for the state of Montana. And this is substantially the reason why the electorate

voted him OUT of his judgeship before he took up his position as a U. S. Magistrate. In the instance of PRICE VS WARNECKE, Magistrate Shanstrom offered himself up as a martyr to shield the prison establishment and the state department of institutions at any cost.

POINT 3. Petitioner now refers to pages 10-18 of appellant's modified brief dated December 13, 1985, regarding plaintiff's motion for declaratory judgment (because of the defendants having defaulted), and Attorney Rotering's motion for summary judgment. Here is a particular phase of judicial misbehavior that cannot pass into oblivion without due comment.

Plaintiff's motion for declaratory judgment caught both Magistrate Shanstrom and Attorney Rotering by surprise. Rotering had not acted before the expiration of the time specification, thus placing the defendants in the position of having defaulted. Because of this, plaintiff was lawfully entitled to take advantage of his adversary's goof-off and pressure the court to render judgment in plaintiff's favor.

It has since been the plaintiff-appellant's logical conclusion that Attorney Rotering privately approached Magistrate Shanstrom with a what-to-do-now proposition. Obviously, it was because of Shanstrom's reply-suggestion that Rotering filed his "Defendants Motion for Summary Judgment." If this were not so, why didn't Rotering motion for summary judgment long before the case had progressed to this point ???

But when the defendants Motion for Summary Judgment was coupled with plaintiff's acquiescence (and his own Motion for Summary Judgment), this changed things just enough so that the magistrate could stretch out the powerful protective arm of the judiciary and come up with the summary judgment that totally favored the defendants. And in spite of the plaintiff's countering response to the magistrate's findings and recommendation, the approving district judge bowed to the fraternalized set-up by rubber-stamping the sly work of the Rotering-Shanstrom alliance. See pages 36-43 of appellant's brief dated December 13, 1985.

POINT 4. The word "totally," above, is underscored for a purpose. On September 1, 1984, Magistrate Shanstrom convened a $700,000 lawsuit involving a man who was injured after falling down a laundry chute (Berge vs Boyne USA Inc.). Shanstrom found that Berge was 45 percent negligent because he was drunk and erroneously entered the linen room believing it was where the vending and ice machines were. The restraining bars around the chute were inoperative and the room was not locked, resulting in Berge falling head-first into the chute, ultimately breaking his back. Shanstrom made the percentage deduction and awarded Berge $385,000 in damages.

Petitioner contends that the above amounts to case law (a very legal tool used extensively in the courtroom and in the appeals process). It could lawfully be applied to the case at hand (PRICE vs WARNECKE). Had the magistrate so extended his percentage technique to this case, he would have been hard put to find this plaintiff negligent by ANY percentage — this plaintiff was imprisoned and totally at the mercy of the prison establishment for health care.

POINT 5. Petitioner is of the opinion that if a litigant in one case has been awarded damages on a percentage basis (like in Berge vs Boyne USA, Inc.), a litigant in another case (particularly in the same court with the same magistrate presiding), is lawfully entitled to the same treatment. To rule it out would be ruling in a discriminatory situation.

POINT 6. It seems appropriate at this point to reemphasize some forceful language relative to Nick Rotering's credibility as an attorney (especially as an attorney representing the state). Nothing could describe it more accurately than the opening paragraph of a news item appearing in the 10-27-84 edition of the Great Falls Tribune:

> "District judge John McCarvel has rapped the state of Montana with a $10,000 fine for "reprehensible" delays and for providing "false, incomplete, misleading and evasive answers in the fact-gathering stage of a lawsuit filed against the state."

.... "The state attorneys involved are John Bobinsky of the Department of Administration and Nick Rotering of the Department of Institutions."

POINT 7. Petitioner now refers to his statement under the heading FOREWORD on page 2 of Appellant's brief dated December 13, 1985. Despite Judge Farris' denial of appellant's motion for leave to file an oversize brief after the original brief (dated October 28, 1985) had been transmitted to the court, the appellant viewed the denial action as another stumbling block in the maze of judicial bureaucracy to discourage further pursuance.

According to a form notice from the clerk's office (by Don McFarland, Deputy Clerk), dated November 5, 1985, the oversize brief was a minor discrepancy which could be corrected simply by the appellant filing a motion for leave to file an oversize brief. Obviously, Judge Farris had obtained a copy of the oversize brief from the clerk's office and read through it before issuing the ruling to deny the motion.

So be it. Notwithstanding the painstaking work required to completely re-do the brief to get it under 50 pages, appellant is still of the opinion that his original brief containing a total of 74 pages was really not all that excessive and could have been judiciously allowed to stand because of the involvement of a Related Case.

That related case involved appellant's lawsuit against the Montana Board of Pardons for violating plaintiff's right to parole. It is of interest to note that in July of 1986 (because of an ACLU intervention in a class action), the Ninth Circuit Court of Appeals reversed the Butte District Court's dismissal of a lawsuit filed by an inmate of the Montana State Prison (a case identical in scope to the appellant's case filed under Docket No. 82-3421).

POINT 8. As an end result of this rehearing process, petitioner is asking the court to reconsider its finding as contained in the MEMORANDUM* judgment filed under date of May 2, 1986, thence to find in favor of the plaintiff/appellant and carry out the judgment as requested on page 48 of

appellant's brief dated December 13, 1985.

Dated at Bozeman, Montana, this 3rd day of February, 1987.

/s/ JOHN L. PRICE

Petitioner-Appellant

[End of appellant's PETITION FOR REHEARING to the Ninth Circuit Appeals Court.]

The petitioner, now, presents a prime example in this case of judicial deception (re: Appeals Court MEMORANDUM* judgment filed under date of May 2, 1986; appendix 2a, 3a, 4a). Paragraph 2 therein is as follows (verbatim et literatim):

> "We affirm. Price raises no issues of material fact, and the prison officials are entitled to a judgment as a matter of law. See Amaro v. Continental Can Co., 724 F.2d 747, 749 (9th Cir. 1984)."

Because of a nagging wonderment as to what relevance a decision involving a worker's union (Amaro) and the Continental Can Company could possibly

have to the appellant's case, petitioner consulted the FEDERAL REPORTER and found the summary of that case to be as follows:

> "Case No. 83-5519. Former employees who were laid off brought action alleging violations of the Employment Retirement Income Security Act. The United States District Court for the Central District of California, Laughlin E. Waters, Jr., entered judgment and former employees appealed. The Court of Appeals, Skopil, Circuit Judge, held that: (1) Arbitration award on grievance under collective bargaining agreement was not res judica of ERISA claims arising out of the same facts; (2) Exhaustion of arbitration procedure was not required under ERISA; and (3) Remand was necessary to determine whether action should be stayed pending arbitration of grievance. Reversed and remanded."

And the Appeals Court, in inexcusable deception, cited that case as a criteria which entitled the prison officials (in appellant's case) to a judgment as a matter of law! Honestly, if the instance

of deception were not so fatally serious, it would, indeed, be ludicrous.

Here, it is glaringly obvious that some legal intern or staff researcher glanced at a prepared list of case rulings, picked one at random without meticulously confirming its relevancy to the case at hand, then handed it into the document-preparation machinery of the court, to be ultimately worked into the MEMORANDUM* judgment.

The circuit judges were no better equipped in their citing expertise, and allowed it to remain in the finalized judgment.

Now comes another deliberate instance of judicial deception and intentional "cover-up" scheme, found in the Magistrate's Findings and Recommendation (supplement to appendix 1a, page 2) where it is stated that "Defendants have filed a motion for summary judgment with a supporting memorandum and discovery documents ...."(underscoring is mine). NO DISCOVERY DOCUMENT WAS EVER FILED! Such a document had been committed in the defendants memorandum but the institutions attorney failed to file any.

And this was one of the reasons why the plaintiff moved for declaratory judgment by default.

And, here, petitioner presents another instance of judicial error that is almost as clumsy (and fatal) as the two described above. This time it's a situation involving unethical judicial behavior in the case proceedings:

After the Appeals Court had received appellant's MEMORANDUM of May 24, 1986 (appendix 5a, 6a, 7a), which was anything but complimentary to the three judges involved (Sneed, Alarcon and Noonan), it is to be noted that the same three judges remained as the officiating panel in subsequent developments and case actions.

These three judges should have been removed from the case upon receipt of appellant's MEMORANDUM of May 24, 1986, and a new panel assigned, especially since the appellant made it unmistakably clear in his MEMORANDUM that he intended to continue the case into the U. S. Supreme Court.

By the original panel remaining in control of the

case after the appellant's MEMORANDUM of May 24th had been received, this gave them the revengeful opportunity to lie in ambush against the appellant whenever the case-situation was appropriate (which was exactly what they did by clever manipulation with appendices 33a, 41a).

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REASONS FOR GRANTING THE WRIT

The judgment at District Court level was a farce from beginning to end. The matter was in the hands of the officiating magistrate for a period of three and one half years; an official who was determined to judge according to his own personal viewpoints and standards, and who unscrupulously and unjudiciously acted to coddle and protect the prison officials and shield the state department of institutions.

Even after the plaintiff was lawfully entitled to have won the case by default, this magistrate (in conspiracy with the institutions attorney) found a stealthy way to scuttle the plaintiff and award summary judgment to the defendants.

The District Judge who approved the findings and recommendation of the magistrate could not possibly have conscientiously and judiciously reviewed the contents of the case file before rubber-stamping his approval on the magistrate's findings and recommendation.

The Appeals Court shenanigans are well documented in the APPENDIX. Its judgment to the effect that "Price raises no issues of material fact" (appendix 3a) is prevaricative — the case file contains adequate documentation of material fact in support of the plaintiff-appellant.

The granting of this writ is essential so that the Court can exercise its power of appellate jurisdiction in overseeing the matter of JUDICIAL MALFEASANCE that has prevailed in this case.

There <u>are</u> present exceptional circumstances warranting the exercise of the Court's discretionary powers, and judicial relief cannot be had in any other form or from any other court.

- - - - - - - - - - - - - - - -

CONCLUSIONS

Since it is not possible to deduce that the District Court, as well as the Appeals Court, acted in the pursuit of justice, the petitioner has no alternative but to conclude that both courts acted overwhelmingly to scuttle the plaintiff/appellant for the concerted purpose of shielding the prison officials and protecting the state department of institutions.

For the reasons that are conspicuously in evidence throughout this whole petition, the writ of certiorari should issue to review the judgments of the District Court and the Appeals Court.

Dated at Bozeman, Montana,
this 30th day of July, 1987.

John L. Price
JOHN L. PRICE
Petitioner

JOHN L. PRICE (PRO SE)
8276 HUFFINE LANE
BOZEMAN, MONTANA 59715
(406) 586-2713

CERTIFICATE OF SERVICE

This is to certify that this document has been submitted by mail on this 30th day of July, 1987, as follows:

To Clerk of Court, U. S. Court
of Appeals for the Ninth Circuit,
P. O. Box 547,
San Francisco, California. 4 copies

Clerk of Court, U. S. District
Court, Room 273, Federal Bldg.,
Butte, Montana 59701. 1 copy

Nick A. Rotering, attorney,
1539 Eleventh Ave.,
Helena, Montana 59620. 1 copy

John L. Price
JOHN L. PRICE
Petitioner

APPENDIX

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

F I L E D

JULY 17 1985

LOU ALEKSICH, JR. CLERK

By: Doreen F. Hugo
Deputy Clerk

JOHN L. PRICE,

Plaintiff,

vs.

HENRY RISLEY, Warden, et al.,

Defendants.

O R D E R

No. CV-81-91-BU

The court hereby accepts and approves the findings and recommendation of the United States Magistrate.

THEREFORE IT IS ORDERED and this does order that the defendants' motion for summary judgment be granted.

Done and dated this 17th day of July, 1985.

/s/ W. D. MURRAY

Senior United States District Judge.

supplement
to 1a (1)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

F I L E D
MAY 2 1985
LOU ALEKSICH, JR. CLERK
By: Doreen F. Hugo
Deputy Clerk

JOHN L. PRICE,

Plaintiff,

vs.

HENRY RISLEY, Warden, et al.,

Defendants.

Cause No. CV 81-91-BU

FINDINGS and RECOMMENDATION OF U. S. MAGISTRATE

****

Plaintiff John L. Price has filed this against defendants Henry Risley, Patrick Warnecke and Beverly Beck pursuant to 42 U.S.C. Section 1983. All of the defendants are employees of the Montana State Prison. Defendant Risley is the Warden. Defendant Warnecke is the Associate Warden of Treatment. Defendant Beck is the head nurse at the Prison Infirmary. Plaintiff is a former Montana State Prison inmate.

The substance of plaintiff's complaint is that between June 3, 1981 and October 22, 1981, the date of his release, he did not receive adequate care for his dental problems. Specifically, plaintiff alleges that the above-named defendants conspired to thwart plaintiff's efforts to receive dental work and/or to ensure that plaintiff's dental needs were ignored. Defendants have filed a motion for summary judgment with a supporting memorandum and discovery documents pursuant to Federal Rule of Civil Procedure 56 on the ground that there is no genuine issue as to any material fact and that as a matter of law judgment should be entered in their favor. Plaintiff filed a motion for summary judgment in opposition to defendants' motion with supporting documents.

The United States Magistrate first addresses plaintiff's complaint concerning defendant Risley. The record indicates that Henry Risley did not become warden of Montana State Prison until august of 1981 and had no involvement in this action. Plaintiff agrees that Warden Risley should be dismissed as a party to this action. The United States Magistrate finds, therefore, that defendant Risley should be dismissed as a party to this action.

Concerning plaintiff's claim against defendants Beck and Warnecke, the record reflects agreement among the parties as to the following facts:

1. Plaintiff was incarcerated in the Montana State Prison between June 3, 1981 and October 22, 1981, during which time he sought treatment for dental problems.

2. On June 3rd plaintiff had an appointment with the prison dentist, Dr. Keppler, who told him that an abscess had formed over a bridgework-anchored tooth and that the tooth should be either extracted or a root canal performed. Dr. Keppler told plaintiff that this kind of work was not done at the prison and he recommended that he see an outside dentist.

3. On June 4th plaintiff sent a message to defendant Warnecke concerning his need for special dental treatment.

4. On June 9th C Unit Counselor Avery informed the plaintiff that he could have dental work done in Missoula, Helena or Deer Lodge providing that he agreed to pay the bill and pay an escort guard

a fee for escorting him to and from the dentist office. Counselor Avery also indicated that he would set up another appointment for plaintiff with the prison dentist.

5. On june 10th plaintiff saw Dr. Keppler, who again informed him that an outside dental appointment would have to be made. Dr. Keppler indicated he would arrange an outside appointment for plaintiff.

6. On June 27th plaintiff wrote a letter to defendant Warnecke reviewing his dental problems and point out his difficulty in securing satisfactory treatment.

7. On July 13, 1981, defendant Warnecke responded to plaintiff indicating that his answer to plaintiff's June 4th message was delayed due to contract negotiations concerning the Montana State Prison dentist. He indicated to plaintiff that Dr. Keppler, who did not perform root canals, was underbid by Dr. Snyder who became the new prison dentist. He stated that Dr. Snyder would be discussing plaintiff's options with him. Defendant Warnecke's letter then stated:

"You should be aware that in response to your first kite of June 4th, I checked with Dr. Keppler about your condition. At that time he advised me that you were receiving antibiotics for the abscess, that the particular tooth in question had no more than a 50-50 chance of being saved even with a root-canal, and that it would be no less salvageable if you waited until after your discharge date in October of 81 for the work to be done.

As it stands now you should be able to have a root canal done at the Montana State Prison within the near future, presuming Dr. Snyder finds such is needed in your case. You can still pursue having your private dentist in Bozeman do the work, but the State of Montana will not be financially responsible."

8. On July 14th plaintiff was examined by the new prison dentist, Dr. Snyder, who recommended periodontal surgery to the upper-right quadrant and who informed plaintiff that at this time a root canal would be questionable.

9. On August 5th Dr. Snyder performed surgery which involved cutting away the gum tissue around the three-root molar exposing the base of the molar so as to clean out the infectuous pocket.

10. On August 11th Dr. Snyder performed a post-operative checkup. He found the infectuous pocket clean and the tooth solid and functioning normally. He declared there was no need for root-canal work and no further appointments were scheduled unless complications developed.

11. On September 13th plaintiff requested a dental appointment and antibiotic medication for recurring tooth abscess. Plaintiff did not receive any medication until the evening of September 16th.

12. On September 18th plaintiff saw Dr. Snyder who prescribed antibiotic medication and pain-killers for the next five days. Dr. Snyder indicated to plaintiff that in view of the fact that he would be released in a month, he should see his own doctor about the problem. Medication was not made available for plaintiff over the five-day prescription period.

13. Plaintiff was released on October 22, 1981.

The standard for determining whether inadequate medical treatment or a lack thereof is a constitutional deprivation under 42 U.S.C. Section 1983 was established in Estelle v. Gamble, 429 U.S. 97, 104 (1976). In that case the United States Supreme Court indicated that deliberate indifference to a prisoner's serious illness or injury would state a cause of action under Section 1983. This would be true whether the indifference was manifested by prison doctors or by other prison personnel in interferring with access to medical help. The Court indicated, however, that an inadvertent failure to provide medical care was not a constitutional deprivation and that a complaint that a physician had been negligent in diagnosing or treating a medical condition did not state a valid claim. Id, at 106.

In applying this standard to the facts of this case, the United States Magistrate finds that defendants Warnecke and Beck were not guilty of acts or omissions evidencing deliberate indifference to plaintiff's medical needs or conspiring to ignore plaintiff's pain and suffering due to his

dental problems. Whether plaintiff received the treatment which would have been best for him is a question this Court need not address as a medical malpractice does not become a constitutional violation because the victim is a prisoner. Id, at 106. The record reflects that plaintiff's medical condition was not ignored or treated in a way manifesting deliberate indifference. The record also does not support plaintiff's contention that defendants Warnecke and Beck attempted to interfere with plaintiff's receiving adequate dental care.

RECOMMENDATION

The United States Magistrate recommends that defendants' motion for summary judgment be granted. In view of the facts described above, defendants, as a matter of law, have not violated plaintiff's constitutional rights to adequate medical treatment while incarcerated at the Montana State Prison.

DONE and DATED this 30th day of April, 1985.

/s/ JACK D. SHANSTROM

United States Magistrate

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

F I L E D
MAY 2 1986
Cathy A. Catterson,
Clerk, U.S.Court of Appeals.

JOHN L. PRICE, Plaintiff-Appellant, vs. PATRICK W. WARNECKE, Defendant-Appellee.	No. 85-4076 D.C. #CV 81-91-BU-WDM M E M O R A N D U M*

Appeal from the United States District Court

for the District of Montana

William D. Murray, District Judge, Presiding

Submitted: April 3, 1986

Before: SNEED, ALARCON and NOONAN, Circuit Judges

John Price, appearing pro se, appeals district court's order granting summary judgment for Montana state prison officials in Price's 42 U.S.C. §§ 1983 action. Price alleged that he suffered deliberate indifference to a serious medical condition because he was denied dental treatment for his abscessed tooth.

We affirm. Price raises no issues of material fact, and the prison officials are entitled to a judgment as a matter of law. See Amaro v. Continental Can Co., 724 F.2d 747, 749 (9th Cir. 1984).

In order to rise to a level of a violation of the eighth amendment, a punishment must be "incompatible with the evolving standards of decency that mark the progress of a maturing society ... or ... involve the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 102-03 (1976). To state a claim under section 1983 for wrongful medical treatment, the plaintiff must allege "deliberate indifference to a prisoner's serious illness or injury." Id at 105.

A difference of opinion between the prisoner and prison medical officials is insufficient to state a claim under section 1983. Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981).

The undisputed facts demonstrate that Price was treated for his abscessed tooth. He saw a prison dentist on at least five occasions in an eight-month period and received, what he considered, partial treatment for the abscess. At most,

Price's claims represent a difference of opinion between the type of treatment he preferred and what he received. That difference of opinion does not rise to the level of deliberate indifference to Price's serious medical need and, accordingly, is not actionable under section 1983. Id. Moreover, Price received dental treatment compatible with society's evolving standards of decency. See Estelle, 429 U.S. at 102.

AFFIRMED.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

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8276 Huffine Lane,

Bozeman, Montana 59715.

MEMORANDUM May 24, 1986.

To: Clerk of Court,

U. S. Court of Appeals for the Ninth Circuit,

P. O. Box 547, San Francisco, California 94101.

This refers to the court's MEMORANDUM* filed under date of May 2, 1986.

Re: Docket No. 85-4076
(D.C. #CV 81-91-BU-WDM)

By this instrument, the Ninth Circuit Judges Sneed, Alarcon and Noonan are hereby informed that plaintiff does not consider the case to be properly, and legally processed unless (and until) ALL the issues contained in plaintiff's brief dated December 13, 1985 (pages 4 & 48) are fully addressed (I repeat, FULLY addressed). The issues which were conveniently "swept under the rug" by the officiating judges were issues when the case was filed — and they remain issues until they are processed without prejudice and the legal-weevil cover-up technique.

Plaintiff is of the opinion that if the judges named above are intelligent enough to address the single issue contained in the court's MEMORANDUM*, it would subsequently follow that they should be capable of addressing the issues of the illegal actions of both the district court and the appeals court, and the judicial malfeasance involved.

Failure of the appeals court to fully address all the issues of the case will provide plaintiff with legal grounds to petition the U. S. Supreme Court for a writ of certiorari.

By copy hereof, the Clerk of Court, UNITED STATES SUPREME COURT, is hereby notified of plaintiff's intent to petition for a writ of certiorari in the event that the appeals court fails to address the issues of the case as stated above.

In addition to fully addressing the issues so stated, the appeals court is requested to inform the plaintiff as to what action is being taken to compensate the plaintiff for damages due to the illegal actions and judicial malfeasance cited in the case brief.

/s/ JOHN L. PRICE

Plaintiff-Appellant

Copy to:

Clerk, U. S. District Court, Butte, MT.

Nick A. Rotering, attorney,
1539 Eleventh Ave., Helena, MT 59620.

8276 Huffine Lane,
Bozeman, Montana 59715.

MEMORANDUM June 25, 1986.

To: Clerk of Court,
UNITED STATES SUPREME COURT
Washington, D.C. 20543.

Re: My MEMORANDUM to Clerk, U. S. Court of Appeals for the Ninth Circuit, San Francisco, dated May 24, 1986.

A copy of the document in reference was submitted to your office (copy is attached hereto). Your attention is respectfully directed to paragraph 4 therein.

A time span of one month has elapsed since my MEMORANDUM of 5-24-86 was transmitted to the clerk of the appeals court. To date, plaintiff has received no response, nor any communication which would indicate that a response would be forthcoming. Plaintiff is therefore entitled to assume that the appeals court judges prefer to remain furtively silent.

Plaintiff now claims that he has legal grounds to petition the UNITED STATES SUPREME COURT for a writ of certiorari and will proceed to do so.

The clerk of the United States Supreme Court is hereby requested to act as follows:

1. Assign a docket number to the case so that plaintiff may officially and formally open proceedings.
2. Inform plaintiff of the deadline date for the petition to be filed.
3. Furnish plaintiff with all appropriate forms, along with guidelines and instructions for petitioning the court.

/s/ JOHN L. PRICE

Plaintiff-Appellant

Copy to:

U. S. District Court, Butte, Montana.

U. S. Appeals Court for the Ninth Circuit.

Nick A. Rotering, attorney, Helena, MT.

8276 Huffine Lane,

Bozeman, Montana 59715.

MEMORANDUM July 8, 1986.

To: Clerk of Court,

U. S. Court of Appeals for the Ninth Circuit.

P. O. Box 547, San Francisco, California 94101.

Re: Docket No. 85-4076
(D.C. #CV 81-91-BU-WDM)

1. Appeals Court MEMORANDUM* filed under date of May 2, 1986.

2. My MEMORANDUM to Clerk, Appeals Court, dated May 24, 1986.

3. My MEMORANDUM to Clerk, U. S. Supreme Court, dated June 25, 1986.

In response to reference 3, plaintiff received a booklet entitled "RULES of the Supreme Court of the United States. It is unmistakably clear that a petition for writ of certiorari cannot properly be filed until plaintiff has petitioned the appeals court for rehearing of the case and is either denied or the initial appeals court judgment is upheld.

Plaintiff did not petition the appeals court for a rehearing. To have done so would have been nugatory in scope, since the appeals court judges

had already signified their intentions to scuttle the plaintiff by singling out one aspect in the case file and shaping it falsely so as to justify a judgment in favor of the defendants.

Plaintiff acknowledges the fact that the deadline date to petition for a rehearing has long ago expired (14 days after date of judgment).

Plaintiff now requests that the appeals court issue a statement which, in essence and effect, will constitute a reply to reference 2, and that which is contained herein. Plaintiff will then submit the statement to the U. S. Supreme Court in lieu of the document indicated in paragraph 1, above.

Any overture by the appeals court to now offer a rehearing of the case will be considered a voluntary move and not necessarily that one has been requested by the plaintiff.

/s/ JOHN L. PRICE

Copy to: Plaintiff-Appellant

U. S. District Court, Butte, Montana.
U. S. Supreme Court.
Nick A. Rotering, attorney, Helena, MT.

8276 Huffine Lane,

Bozeman, Montana 59715.

MEMORANDUM July 21, 1986.

To: Clerk of Court,

U. S. Court of Appeals for the Ninth Circuit,

P. O. Box 547, San Francisco, California 94101.

Re: Docket No. 85-4076
(D.C. #CV 81-91-BU-WDM)

My MEMORANDUM to Clerk, Appeals Court, dated July 8, 1986.

To date, plaintiff has not received a response to the MEMORANDUM in reference, and assumes that none will be forthcoming. Plaintiff can easily understand why the honorable and noble appeals court judges (Sneed, Alarcon and Noonan) have chosen to pursue the well-known CYA course of action, which includes the systematic silence and connivance.

The court clerk is hereby requested to furnish plaintiff with a quotation of the applicable law governing the assignment of circuit judges to cases before the court (to-wit: the number of judges required)/ Plaintiff submitted FIFTEEN copies of his brief according to the court rules, which implies that fifteen judges would enter into the

review and judgment process. In this case, only three judges officiated. How come?

In addition to the above, the court clerk is requested to furnish answers to the following questions:

A. What is plaintiff's deadline date for filing the petition for writ of certiorari?

B. What is the filing fee for the writ?

C. Does plaintiff submit his petition for writ of certiorari to the clerk of the appeals court, or directly to the clerk of the U. S. Supreme Court?

/s/ JOHN L. PRICE

Plaintiff-Appellant

Copy to:

U. S. Supreme Court

U. S. District Court, Butte, Montana.

Nick A. Rotering, attorney, Helena, MT.

8276 Huffine Lane,

Bozeman, Montana 59715.

MEMORANDUM August 11, 1986.

To: Clerk of Court,

UNITED STATES SUPREME COURT,

Washington, D.C. 20543.

Re: Docket No. 85-4076 (U.S.Court of Appeals for the Ninth Circuit).

This is to acknowledge receipt (with thanks) of the copy of the "RULES of the Supreme Court of the United States" and the sample proceedings on how TO FILE FOR WRIT OF CERTIORARI IN FORMA PAUPERIS. Petitioner cannot meet the statutory requirements to proceed as an indigent. Throughout the case (including the appeals process), petitioner has proceeded as a pro se litigant.

NEW SUBJECT

This will also serve to inform your office that, to date, petitioner has not received any response to the following documents:

1. MEMORANDUM to Clerk of the appeals court, dated May 24, 1986.

2. MEMORANDUM to Clerk of the Appeals court dated July 8, 1986.

3. MEMORANDUM to clerk of the appeals court dated July 21, 1986.

Because of the failure of the appeals court to respond to the documents described above, petitioner has been unable to proceed with his petition for writ of certiorari. Petitioner has no choice but to assume that the appeals court has deliberately withheld responses to the documents indicated so as to thwart the petition for the writ. In petitioner's opinion, this clearly amounts to a judicial conspiracy to deny plaintiff/petitioner his right to due process.

In view of the above, information is requested as to whether or not there is substantial justification to make application for extension of time within which to file a petition for writ of certiorari (under Rule 20), or to file an application for an Extraordinary writ (under Rule 27).

/s/ JOHN L. PRICE

Plaintiff-Appellant

Copy to:

U. S. District Court, Butte, Montana
Re: CV # 81-91-BU-WDM.

U. S. Court of Appeals for the Ninth Circuit.

Nick A. Rotering, attorney, Helena, Montana.

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

August 18, 1986

Mr. John L. Price

8276 Huffine Lane

Bozeman, MT 59715

Re: John L. Price

Dear Mr. Price:

In reply to your most recent letter, I regret to inform you that it is not possible for a member of the staff of this office or a justice of this Court to answer the questions you present.

In order for an application for an extension of time to be filed, a copy of the lower court orders and opinions should be attached pursuant to Rule 20.6 of this Court.

An application for an extension of time must set out the grounds on which the jurisdiction of this Court is invoked and must identify the judgment sought to be reviewed. You should also specify in your application for an extension of time the amount of time you are requesting, your

reason(s) why the granting of an extension is deemed justified, and you must attach a certificate of service that provides the name and address of counsel for the opposing party. See Rules 20, 28, 29, and 43 for information on filing an application for an extension of time.

Very truly yours,

JOSEPH F. SPANIOL, JR., CLERK

by /s/ Edward F. Turner, Jr.
Assistant Clerk.

8276 Huffine Lane,

Bozeman, Montana 59715.

MEMORANDUM September 10, 1986.

To: Clerk of Court,

U. S. Court of Appeals for the Ninth Circuit,

P. O. Box 547, San Francisco, California 94101.

Re: Docket No. 85-4076
(D.C.#CV 81-91-BU-WDM)

This document is transmitted with the direction and understanding that it will be brought to the attention of Ninth Circuit Judges Sneed, Alarcon and Noonan (the three "honorables" who were purportedly in agreement with the contents of the MEMORANDUM* judgment which was filed under date of May 2, 1986).

This will also serve to remind your office and the judges (again) that, to date, plaintiff/appellant has not received a response to the following documents:

1. My MEMORANDUM to clerk of the appeals court dated May 24, 1986.

2. My MEMORANDUM to clerk of the appeals court dated July 8, 1986.

3. My MEMORANDUM to clerk of the appeals court dated July 21, 1986.

Because of a previous illegal performance by the appeals court (in the case bearing Docket No. 82-3421, processed during Phillip B. Winberry's tenure as clerk of court), the plaintiff/appellant has compelling reason to believe that a surreptitious directive has been handed down from a formidable power within the system to the present clerk of court (Cathy A. Catterson) to refrain from responding to any correspondence from the plaintiff/appellant — which essentially adds another factor to the charge of judicial conspiracy.

Plaintiff/appellant has now visualized that the appeals process of this case has been a connived judicial scheme from the beginning -- and this statement implies that the case was intentionally singled out for preferential treatment in favor of the defendants regardless of the case-file evidence. It is more than likely that the following occurred:

1. Because of the appellant's pursuance of the case as a "pro se" litigant (and a former prison inmate), it was arranged for a subordinate staff member to prepare the judgment, using whatever legal jargon as would be necessary to favor the defendants. Consequently, none of the assigned judges ever consulted the whole case as presented in appellant's brief dated December 13, 1985.

2. The staff member was further instructed to prepare the judgment as a MEMORANDUM*. After reading the criteria contained in 9th Circuit Rule 21, the appellant can easily understand why the court wouldn't want this case to be published, or the author of the judgment revealed.

But due to the appellant's follow-up actions after the "honorable" MEMORANDUM* judgment was received (especially the appellant's MEMORANDUM dated May 24, 1986), the three judges all looked into the mirror at the same time and observed each other caught with their pants down. Whenever this

occurs in our country's various bureaucratic systems, it invariably and systematically follows that the powers within will pursue every conceivable means to cover it up, doing whatever needs to be done until the threatening situation goes away, (Example #1: Watergate)(Example #2: Claiborne)(Example #3: Hastings).

Plaintiff/appellant intends to pursue an appeal to the United States Supreme Court by whatever means are available.

/s/ JOHN L. PRICE

Plaintiff-Appellant

Copy to:

U. S. Supreme Court.

U. S. District Court, Butte, Montana.

Nick A. Rotering, attorney, Helena, MT.

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

September 22, 1986

Mr. John L. Price

8276 Huffine Lane

Bozeman, Montana 59715

Re: John L. Price

Dear Mr. Price:

Your letter addressed to the United States Court of Appeals for the Ninth Circuit indicating that you intend to submit an application for an extension of time within which to file a petition for a writ of certiorari to this Court in the above-entitled case was received on September 15, 1986. In order for an application for an extension of time to be filed, a copy of the lower court's opinion and order denying rehearing, if appropriate, should be attached pursuant to Rule 20.6 of the Rules of this Court.

An application for an extension of time must set out the grounds on which the jurisdiction of this Court is invoked and must identify the judg-

ment sought to be reviewed. You should also specify in your application for an extension of time the amount of time you are requesting, your reason(s) why the granting of an extension is deemed justified, and you must attach a certificate of service that provides the name and address of counsel for the opposing party. See Rules 20, 28, 29 and 43 for information on filing an application for an extension of time.

Very truly yours,

JOSEPH F. SPANIOL JR., CLERK

By /s/ Edward L. Turner, Jr.
Assistant Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

JOHN L. PRICE, Plaintiff-Appellant-Petitioner -vs- U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT (JUDGES SNEED, ALARCON AND NOONAN) AND CLERK OF COURT, Defendants-Appellees	APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO PETITION THE COURT FOR WRIT OF CERTIORARI.

The petitioner (JOHN L. PRICE) hereby informs the high court that he has been forced to pursue this course of action due to the illegal and unscrupulous actions of the courts below.

A simple matter of justice is at stake. Petitioner has no alternative but to insist that judicial malfeasance has been committed, leaving petitioner with the option of doing nothing or something about it. The only recourse is for the case to proceed now to the supreme court, serving notice that lower courts may not engage in skulduggerous performances and rely on their arrogance and built-in power of office to deny responsibility and to circumvent exposure. within ANY framework of institutional scope, there is nothing more

hideous to behold than a malfunctioned judicial power.

But before the petitioner is enabled to present the whole matter to the high court, it is essential that an extension of time be provided so that a petition for writ of certiorari may be prepared and presented.

Petitioner sees no need to enter into an extensive geezil-worded disquisition designed to influence a ruling on the application. The enclosures are either sufficient to support the petitioner's application, or they are not.

Accordingly, petitioner hereby makes application for such time (in extension) as may be stipulated by the court.

Enclosures to the application consist of the following documents:

(1) Undated (unsigned) MEMORANDUM* ruling of the U. S. Court of Appeals for the Ninth Circuit, filed in the clerk's office under date of May 2, 1986.

(2) My MEMORANDUM to clerk of the appeals court dated May 24, 1986.

(3) My MEMORANDUM to clerk of the appeals court dated June 25, 1986.

(4) My MEMORANDUM to clerk of the appeals court dated July 8, 1986.

(5) My MEMORANDUM to clerk of the appeals court dated July 21, 1986.

(6) My MEMORANDUM to clerk of the supreme court dated August 11, 1986.

(7) Letter from clerk of the supreme court dated August 18, 1986.

(8) My MEMORANDUM to clerk of the appeals court dated September 10, 1986.

/s/ JOHN L. PRICE

Plaintiff-Appellant-Petitioner

Dated at Bozeman, Montana,

this 25th day of September, 1986.

CERTIFICATE OF SERVICE

This is to certify that this document has been submitted to the defendants (Judges Sneed, Alarcon and Noonan) via Clerk of Court, U. S. Court of Appeals for the Ninth Circuit, and to the clerk, this 25th day of September, 1986.

Copy to:

U. S. District Court, Butte, Montana.

Nick A. Rotering, attorney, Helena, MT.

/s/ JOHN L. PRICE

Plaintiff-Appellant-Petitioner

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

October 1, 1986

Mr. John L. Price

8276 Huffine Lane

Bozeman, MT 59715

Re: John L. Price v. Patrick W. Warnecke

Dear Mr. Price:

The application for an extension of time within which to file a petition for writ of certiorari in the above-entitled case was received October 1, 1986, and is herewith returned as out-of-time. As the United States Court of Appeals for the Ninth Circuit entered judgment on May 2, 1986, the petition for writ of certiorari was due on or before July 31, 1986. See 28 U.S.C. 2101(c). Likewise, an application for an extension of time must have been submitted by that date. See Rules 29.2 of the Rules of this Court.

Very truly yours,

JOSEPH F. SPANIOL, JR., CLERK

by /s/ Christopher W. Vasil

Deputy Clerk

8276 Huffine Lane,

Bozeman, Montana 59715.

MEMORANDUM October 9, 1986.

To: Clerk of Court,

Supreme Court of the United States,

Washington, D.C.

ATTENTION: Christopher W. Vasil, Deputy Clerk.

Re: John L. Price v. Patrick W. Warnecke

This will serve to acknowledge receipt of your letter dated October 1, 1986, by which you returned my application for extension of time within which to file a petition for writ of certiorari dated September 25, 1986, citing the reason as "out of time."

A reading of the enclosures to the application makes it understandably clear that it was due to the confounding actions of the 9th circuit appeals court that I was unable to get the petition to your office in time.

I am herewith resubmitting the application (intact) by invoking Supreme Court Rule 43, which allows an application to be addressed to an individual justice. It is requested that the application be delivered to Justice Scalia without further delay.

/s/ JOHN L. PRICE

Plaintiff-Appellant-Petitioner

Copy to:

Nick A. Rotering, Esq., Helena, MT.

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

October 24, 1986

Mr. John L. Price

8276 Huffine Lane

Bozeman, Montana 59715

Re: John L. Price v. Patrick W. Warnecke

Dear Mr. Price:

Your application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was received again on October 14, 1986 and is returned for the reasons set forth in Mr. Vasil's letter of October 1, 1986.

Please note that such an application should have been filed with the Clerk of this Court within ninety (90) days of the entry of the judgment by the United States Court of Appeals for the Ninth Circuit. Once the ninety (90) day period has expired, this Court has no authority

to review the case and the Clerk is directed by the rules of the Court not to file the petition. The time to file such a petition is determined by an Act of Congress and the Court may never overrule that time period as set by Congress.

Very truly yours,

JOSEPH F. SPANIOL, JR., CLERK

By /s/ Edward L. Turner, Jr.

Assistant Clerk

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

F I L E D

DEC 30 1986

Cathy A. Catterson,

Clerk, U.S.Court of Appeals.

JOHN L. PIERCE, Plaintiff-Appellant, vs. PATRICK W. WARNECKE, Defendant-Appellee.	No. 85-4076 D.C. #CV 81-91-BU-WDM ORDER

BEFORE: SNEED, ALARCON and NOONAN, Circuit Judges

The document filed by appellant is treated as a motion to enlarge time to file a petition for rehearing and suggestion for rehearing en banc and as a motion to file such a petition and suggestion. The motion is granted.

8276 Huffine Lane,

Bozeman, Montana 59715.

MEMORANDUM January 7, 1987.

To: Clerk of Court,

U. S. Court of Apprals for the Ninth Circuit,

P. O. Box 547, San Francisco, California 94101.

Re: Docket No. 85-4076
(D.C.#CV 81-91-BU-WDM)

This is to acknowledge receipt of the appeals court ORDER filed under date of December 30, 1986. It is noted that the Plaintiff-Appellant's surname is incorrectly stated as "PIERCE."

As I read the ORDER, the court has already granted the motion to "enlarge the time .... etc.," and is not awaiting any further motion from me.

Information is now requested as to the length of enlargement indicated; (i.e., the deadline date by which I should respond before the court is scheduled to rehear the case).

It is my intention to submit a rehearing brief to argue the facts of the case which are already contained in my appeals brief dated December 13, 1985. Information is requested as to the length of brief allowed, and the number of copies required.

/s/ JOHN L. PRICE Plaintiff/Appellant

8276 Huffine Lane,

Bozeman, Montana 59715.

MEMORANDUM January 20, 1987.

To: Clerk of Court,

U. S. Court of Appeals for the Ninth Circuit,

P. O. Box 547, San Francisco, California 94101.

Re: Docket No. 85-4076
(D.C.#CV 81-91-BU-WDM)

This is to advise that, to date, I have not received a response to my MEMORANDUM to you dated January 7, 1987 (copy attached).

/s/ JOHN L. PRICE

Plaintiff-Appellant

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

F I L E D

JAN 26 1987

Cathy A. Catterson,

Clerk, U.S.Court of Appeals.

JOHN L. PRICE Plaintiff-Appellant, vs. PATRICK W. WARNECKE, Defendant-Appellee.	No. 85-4076 D.C. #CV 81-91-BU-WDM ORDER

Before: SNEED, ALARCON and NOONAN, Circuit Judges

The petition for rehearing shall be filed within 14 days of entry of this order. Appellant is referred to Fed. R. App. P. 40(a), (b).

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

San Francisco, California

Docket No. 85-4076

JOHN L. PRICE

Plaintiff-Appellant

-vs-

PATRICK W. WARNECKE,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

(Cause No. CV 81-91-BU-WDM)

P E T I T I O N F O R R E H E A R I N G

(which includes suggestion for rehearing en banc)

BRIEF OF APPELLANT

PROCEEDING IN PROPRIA PERSONA

NOT REPRESENTED BY LEGAL COUNSEL

JOHN L. PRICE

8276 HUFFINE LANE

BOZEMAN, MONTANA 59715

(406) 586-2713

/s/ JOHN L. PRICE

Plaintiff-Appellant

Dated at Bozeman, Montana,

this 3rd day of February 1987

(cover page only)

8276 Huffine Lane,

Bozeman, Montana 59715.

MEMORANDUM March 28, 1987.

To: Clerk of Court,

U. S. Court of Appeals for the Ninth Circuit,

P. O. Box 547, San Francisco, California 94101.

Re: Docket No. 85-4076

Information is requested as to the current status of the case in reference, relative to appellant's PETITION FOR REHEARING dated February 3, 1987.

The purpose of this inquiry is for nothing more (or nothing less) than the assurance that all is in correct judicial order and that the case is in progress through the appellate system.

/s/ JOHN L. PRICE

Plaintiff-Appellant-Petitioner

8276 Huffine Lane,
Bozeman, Montana 59715.

MEMORANDUM April 6, 1987.

To: Clerk of Court,
U. S. Court of Appeals for the Ninth Circuit,
P. O. Box 547, San Francisco, California 94101.

Re: Docket No. 85-4076

This is in reference to my MEMORANDUM to your office dated March 28, 1987. Copy is attached hereto as Enclosure 1. It was intended as a tangible case document (for any future reference) and should have been inserted in the case file along with the clerk's reply thereto.

This is also in reference to the reply, which is hereby acknowledged. Copy is attached hereto as Enclosure 2. Note that the only response was the one word "Pending" above the encircled words "PETITION FOR REHEARING."

Since it was the original of my March 28th MEMORANDUM that was returned (containing the hand-written word "Pending"), appellant has no choice but to believe that there was no copy made and

that the case file does not contain the March 28th MEMORANDUM or a reply.

The appellant directs that this MEMORANDUM (and enclosures) be considered a material element of the case, to be inserted in the case file — after it has been appropriately stamped with the clerk's official "RECEIVED" stamp.

NEW SUBJECT. This is advance notice.

At such time in the future that the following documents are no longer needed by the court, it is requested that all copies be returned to the appellant.

(1) Appellant's appeal brief dated December 13, 1985.

(2) Appellant's EXCERPT OF RECORD dated November 13, 1985.

(3) Appellant's PETITION FOR REHEARING dated February 3, 1987.

Depending on the ultimate disposition of the case at the appeals court level, and because of the considerable expense involved in their preparation, appellant desires to have these copies available for use in subsequent actions.

/s/ JOHN L. PRICE

Encls. Plaintiff-Appellant-Petitioner

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

F I L E D
APR 9 1987
Cathy A. Catterson,
Clerk, U.S.Court of Appeals.

JOHN L. PRICE, Plaintiff-Appellant, vs. PATRICK W. WARNECKE, Defendant-Appellee.	)	No. 85-4076 D.C. #CV 81-91-BU-WDM ORDER

Before: SNEED, ALARCON and NOONAN, Circuit Judges

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied, and the suggestion for a rehearing en banc is rejected.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

San Francisco, California

JOHN L. PRICE, Plaintiff-Appellant, -vs- PATRICK W. WARNECKE, Defendant-Appellee.	Docket No. 85-4076 D.C. #CV 81-91-BU-WDM-MT MOTION TO RECONSIDER AND RESCIND PREVIOUS JUDGMENT

This is in reference to the court ORDER filed under date of April 9, 1987.

As the appellant could have easily anticipated, the ORDER was obviously cast from the customary more-of-the-same JUDICIAL MALFEASANCE, which embraces such subtitles as lying, cheating, conniving, scheming, skulduggery, fraud, collusion, inquination, and instances of illegal proceedings.

Be that as it may (and it's common knowledge that the case file is full of it), appellant will proceed to rationalize and justify this motion to reconsider.

It is noted that the judgment was ordered by the

same three judges who ruled against the appellant in the MEMORANDUM* judgment filed under date of May 2, 1986 (Sneed, Alarcon and Noonan).

The appellant contends that the ORDER of April 9th constitutes an illegal proceeding and must be rescinded. Here's why:

POINT 1. The ORDER filed under date of December 30, 1986 (by Sneed, Alarcon and Noonan), by their own initiative, treated and granted the motion which entitled the appellant to submit his petition for rehearing. This action was taken in extraordinary session to allow the court to consider a matter of exceptional importance.

POINT 2. These judges cannot now reverse themselves without stringent and provable justification. To do so would be tantamount to assigning a group of weasels to guard the henhouse; and, explicitly, a violation of the appellant's right to due process (committed by the judiciary itself).

POINT 3. The appellant contends that the 2nd paragraph of the April 9th ORDER was malignantly

conceived. It is believed that the judges acted impetuously and vindictively from a high-muckety-muck power tantrum because of appellant's MEMORANDUM to the clerk-of-court dated April 6, 1987. How else would the ORDER of April 9th have been so hastily developed?

And even if that paragraph supposedly contained a semblance of truth, it would not circumvent the possibility (or even probability) that some kind of clandestine arrangements were made (by way of a fraternal link-up) so that no judge of the circuit would respond to the appellant's PETITION FOR REHEARING.

Another perceptual possibility (and again a probability) is that one or more of the circuit judges did request a vote, which was conveniently misplaced or misfiled after having been returned to the clerk's office.

And why would not the above assertions have tangible merit? After all, it was because of the appellant's perseverance for years that the three "honorables" were put over-a-barrel enough to

come up with their ORDER of December 30, 1986. By realistic prognosis it is more than likely that these shrewd geniuses would have devised some future course of maneuvering to scuttle the case in a concerted effort to protect the appellate judiciary from humiliation and expose'.

POINT 4. Here's an excerpt from appellant's MEMORANDUM to the clerk-of-court dated May 24, 1986 (paragraph 1 in its entirety):

> "By this instrument, the Ninth Circuit judges Sneed, Alarcon and Noonan, are hereby informed that plaintiff does not consider the case to be properly, judiciously, and legally processed unless (and until) ALL the issues contained in plaintiff's brief dated December 13, 1985 (pages 4 & 48) are fully addressed (I repeat, FULLY addressed). The issues which were conveniently and stealthily "swept under the rug" by the officiating judges were issues when the case was filed — and they remain issues until they are processed without prejudice and the legal-weevil cover-up technique."

Their "honors" Sneed, Alarcon and Noonan are now essentially telling the appellant that ALL Ninth Circuit Judges, by their individual and collective silence, are unequivocally in agreement that they have neither the prerequisite intelligence, expertise, knowledge-of-law, or intestinal fortitude to allow appellant's PETITION FOR REHEARING to proceed.

POINT 5. It is noted that counsel for the defendants (Attorney Nick Rotering) did not oppose or object to the appellant's PETITION FOR REHEARING. This will be a point in evidence to favor the appellant in the event of future proceedings.

POINT 6. Actually, the appellant would be agreeable to forgive all the judicial malfeasance involved if the court would fairly and squarely (without prejudice) adjudicate the ONE major issue (which was singled out and shaped falsely — probably so done by a legal intern dutifully following instructions) so as to opprobriously justify a judgment in favor of the prison defendants, thus to shield and protect the Montana Department of Institutions.

At this point, the appellant is reminded of a statement made by a prominent Montana lawyer-friend, after he had read through the case file up to (and including) the PETITION FOR REHEARING:

> "Mr. Price, your work in preparing the briefs in this case is highly commendable — many lawyers in the country would be envious and jealous. But, sad as it is, there's only one reason why you're not going to win — and that's because you're not represented by a lawyer."

He went on to explain that even though some individual citizens may be successful by representing themselves in lower courts, the appellates are a much different ball of wax, and they are extremely reluctant to let lay persons win their cases under any circumstances — and the court's power-structure will go to even greater extremes to make certain they do not win.

He stated that primarily it's a case of fraternalized bar-association power to begin with — this being the prime-moving hierarchy which governs the appointment of judges. It is an historical rule-

of-thumb that once a federal judge is seated, he (or she) becomes "fraternally hooked" and is totally and unfailingly committed to the protection of lawyers against some one (or any one) beating them out of their professional fee.

It is a well-known (and many-times published) view that the American legal system is comprised of a formidable and professionalized society of myrmidons (a dense population of people who have been rigidly schooled in the art of back-scratching and unscrupulous behavior). Each subordinate dutifully supports the superior, regardless of whether the principle is right or wrong, or at some level between the two extremes. The superior faithfully reciprocates by shielding and protecting the subordinate. However, there is a new counteracting art showing up rather persistently — (whistle-blowing). The fallen Judge Claiborne can attest to this with considerable regret.

Notwithstanding the above power-structure pictures which the appellant knowingly faces into, he is more than confident that the case file, per se,

is in his favor — and he will staunchly stand on the strength and merit of its content.

The appellant anticipates that, in the event he petitions for a writ of certiorari (and even though the odds are tremendous against one being granted), there are innumerable U. S. Supreme Court rulings and criteria that would support the appellant's contention that the appeals court judges who granted the motion entitling the appellant to petition the court for rehearing may not arbitrarily reverse themselves (as in the April 9th ORDER), because to do so would deprive the appellant of his constitutional right to due process as mandated by the ORDER of December 30, 1986, to proceed with his case before the full court.

In the event that this motion for reconsideration and rescission is denied by the panel to which it is directed, the appellant automatically invokes the provisious of Rule 27, FRAP, and it shall forthwith become a motion submitted to another single judge of the circuit as a request for relief.

/s/ JOHN L. PRICE

Plaintiff-Appellant-Petitioner

Dated at Bozeman, Montana, this

18th day of April 1987.

CERTIFICATE OF SERVICE

This is to certify that this document has been submitted by mail to the defendant via his attorney, Nick A. Rotering, 1539 Eleventh Avenue, Helena, Montana 59620, this 18th day of April, 1987.

/s/ JOHN L. PRICE

Plaintiff-Appellant-Petitioner

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OFFICE OF THE CLERK

F I L E D

MAY 7 1987

Cathy A. Catterson,

Clerk, U.S.Court of Appeals.

OFFICE OF THE CLERK

U. S. DISTRICT COURT OF MONTANA

FEDERAL BUILDING

BUTTE, MT 59701 APR 20 1987

CA NO.	DC NO.	TITLE
85-4076	CV 81-91-BU	JOHN L. PRICE vs. PATRICK W. WARNECKE, et al.

Dear Clerk:

The following document(s) in the above listed cause(s) is (are) being sent to you under cover of this letter.

[XXX] Certified copy of the Decree of the Court.

The record on appeal will follow under separate cover.

Please acknowledge receipt on the enclosed copy of the letter.

Very truly yours,
CATHY A. CATTERSON,
Clerk of Court

By: /s/ Juanja V. Ross
Deputy Clerk

8276 Huffine Lane,
Bozeman, Montana 59715.

MEMORANDUM May 4, 1987.

To: Clerk of Court,

U. S. Court of Appeals for the Ninth Circuit,

P. O. Box 547, San Francisco, California 94101.

Re: Docket No. 85-4076

The following references are applicable:

A. Form letter from the clerk of the 9th circuit appeals court (by Deputy Clerk Juanja V. Ross) to the OFFICE OF THE CLERK, U. S. DISTRICT COURT OF MONTANA, FEDERAL BUILDING, BUTTE, MT 59701, dated April 20, 1987.

Reference A transmits to the Butte court a "Certified copy of the Decree of the Court." Note that the Decree of the Court (so transmitted) bears the date of 05-02-86. This form letter also states that "The record on appeal will follow under separate cover." — indicating that the case file is no longer available at the 9th circuit court. Consequently, reference A raises the following questions:

1. Why does the appeals court clerk at this time (after a time-lapse of one full year send the decree of 05-02-86 to the district court clerk?

2. Why does the appeals court clerk dispose of the "record on appeal" by sending it to the district court clerk, particularly in view of the pending appellant's MOTION, reference B? (Observe, here, that reference B predates reference A).

> Reference B was dispatched as PRIORITY MAIL from Bozeman on the morning of Saturday, April 18th, and would have been on hand in the 9th circuit clerk's office at the beginning of office operations on Monday, April 20th, before reference A was originated.

3. Why does not the appeals court clerk inform the district court clerk that there has been court-sanctioned activity in the case since the decree of 05-02-86, to-wit:

   (a) Ninth Circuit Court ORDER filed under date of December 30, 1986, entitling the

appellant to file for rehearing, including suggestion for rehearing en banc.

(b) Appellant's brief which comprises the PETITION FOR REHEARING dated February 3, 1987.

(c) Appellant's MEMORANDUM to the 9th circuit court clerk (inquiring as to the case status) dated March 28, 1987.

(d) Appellant's MEMORANDUM to the 9th circuit court clerk dated April 6, 1987 (commenting on the response to document c, above).

(e) Ninth Circuit Court ORDER filed under date of April 9, 1987, denying appellant's PETITION FOR REHEARING and rejecting the suggestion for rehearing en banc.

(f) Appellant's response to document e, above, in the form of his MOTION dated April 18, 1987 (reference B).

Observe, here, that the appellant's MOTION of April 18th was submitted well within the time-limitation after the issuance of the court ORDER dated April 18th.

Reference B contains a paragraph on page 4 which expresses the possibility that the appellant will petition the U. S. Supreme Court for a writ of certiorari. The appellant now believes that the appeals court clerk disposed of the record-on-appeal at this time in anticipation that such a writ will be sought. And in the judicial process which follows, the 9th circuit court clerk can enter a memorandum to the effect that the record had been returned to district court. This will serve as a delaying tactic, and, of course, a deliberate obstruction to the judicial process.

Consequently, the clerk of the district court (by copy hereof) is requested to take special note of the situation so that the record will be preserved and immediately available when called for.

/s/ JOHN L. PRICE
Plaintiff-Appellant
Petitioner

Copy to:
Butte Court
Nick A. Rotering, attorney.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

F I L E D

MAY 7 1987

Cathy A. Catterson,

Clerk, U.S.Court of Appeals.

JOHN L. PRICE,	)	
	)	
Plaintiff-Appellant,	)	No. 85-4076
	)	
-vs-	)	D.C. #CV 81-91-BU-WDM
	)	
PATRICK W. WARNECKE,	)	ORDER
	)	
Defendant-Appellee.	)	
	)	

Before: SNEED, ALARCON and NOONAN, Circuit Judges

Appellant's Motion to reconsider and rescind previous judgment is denied.

8276 Huffine Lane,

Bozeman, Montana 59715.

MEMORANDUM May 19, 1987.

To: Clerk of Court,

U. S. Court of Appeals for the Ninth Circuit
P. O. Box 547, San Francisco, California 94101.

Re: Docket No. 85-4076

This will serve to acknowledge receipt of the court ORDER filed under date of May 7, 1987, which denies the appellant's motion dated April 18, 1987. The clerk is reminded that the final paragraph of that MOTION is still formally pending and will remain so until the adjudicating process is completed.

NEW AND RELATED SUBJECT

Comes now the appellant with a pertinent INQUIRY addressed to the three honorables (Sneed, Alarcon and Noonan), or to any other judge of the circuit who has the prerequisite expertise in matters of law to render an educated response.

Whether or not a response may be forthcoming (educated or otherwise), the impetus of this inquiry will subsequently serve as a major (and perhaps crucial) factor in the appellant's

forthcoming petition to the U. S. Supreme Court for a writ of certiorari.

To explain briefly, the appeals court (by its oppilative silence) has consistently and surreptitiously refused to address the matters of JUDICIAL MALFEASANCE which has been evident in the case from its beginning to the present (i.e., the inquinate acts committed by the court system itself during the case proceedings).

The question now is whether or not the appeals court is, by law (or mandate), entitled to evade the charges of judicial skulduggery and misconduct when called upon to take judicial notice that such activities have occurred. The appellant contends that the appeals court, by its refusal to judiciously address the issue of JUDICIAL MALFEASANCE in this case has essentially deprived the appellant of his constitutional right to due process.

The appeals court is now requested to fully cite the law or mandate (in exact terms) which provides it with the prerogative to evade any of the issues of a case which it chooses to evade.

Specifically, does the court have the prerogative to evade the issue of JUDICIAL MALFEASANCE in the case at hand?

> The appellant, here, is seeking the law governing the matter and not some kind of gobbelty-goop which imagines that there is a law.

Providing that such a citation is forthcoming, the appellant will have no comment to make, one way or another. The document will merely be submitted as an enclosure to appellant's petition for the writ of certiorari — leaving the evaluation of its applicability to the supreme court.

/s/ JOHN L. PRICE

Plaintiff-Appellent-Petitioner

Copy to:

Clerk of Court, U. S. District Court, Butte, Montana.

Nick A. Rotering, Attorney for Defendants, Helena, Montana.

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

July 9, 1987

John L. Price

8276 Huffine Lane

Bozeman, MT 59715

Re: In Re John L. Price

John L. Price v. Patrick W. Warnecke

Dear Mr. Price:

Pursuant to our telephone conversation today, I am returning 39 copies of a document entitled "Petition for Extraordinary Writ" received in this office on July 6th for its failure to comply with this Court's Rules of Procedure.

If it is your intention to file an extraordinary writ, you must specify what kind, i.e., petition for writ of mandamus, petition for writ of prohibition, etc. It must be styled In Re John L. Price, under a tan cover with the questions presented after the cover page, followed by the table of contents and table of authorities, double spaced and include the district court's opinion, if any. See Rules 27, 21 and 33.

On the other hand, if you intend to file a petition for a writ of certiorari the cover should be white and it appears as though the caption should be John L. Price v. Patrick W. Warnecke to the United States Court of Appeals for the Ninth Circuit in the aforementioned style and format. Enclosed is a sample petition for a writ of certiorari. See Rules 21 and 33.

Corrected copies are to be returned as soon as possible in order for the case to be docketed.

Very truly yours,

JOSEPH F. SPANIOL, JR., CLERK

By: /s/ Loretta S. Ruffin
Assistant Clerk

Enclosures.

cc: Nick A. Rotering, Esq.

Supreme Court, U.S.
FILED
AUG 31 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO. 87-210

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1987

JOHN L. PRICE,

Petitioner,

-v-

PATRICK WARNECKE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

NICK A. ROTERING
Counsel of Record
Montana Department
of Institutions
1539 11th Ave.
Helena, MT 59620
(406) 444-3930
August, 1987
Attorney for Respondent

QUESTION PRESENTED

Whether or not the Petitioner stated a claim for relief or established a set of facts that could be shown to prove a deliberate indifference to a serious medical need to show a violation of the Eighth Amendment to the United States Constitution in order to state a claim for relief under 42 U.S.C. Section 1983.

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STATEMENT OF THE CASE

The Petitioner's statement of the case and the issue presented to this Court is in error and purposely tries to divert the Court from the real issue that was presented to the appellate court. Throughout this litigation, the Petitioner has tried to focus on what he views as judicial malfeasance by the judges of the Ninth Circuit Court of Appeals without really focusing on the issue of whether or not his action could survive the motion for summary judgment in the district court.

In 1981, the Petitioner was an inmate at the Montana State Prison, Deer Lodge, Montana. On September 23, 1981, the Petitioner filed a pro se complaint with the United States District Court in Butte, Montana, claiming a violation of his civil rights as indicated under 42 U.S.C.

Section 1983. The three main defendants in the district court action were W. Patrick Warnecke, then the associate warden of treatment, Beverly Beck, the head nurse at the Prison infirmary, and Henry Risley, the Warden of the Montana State Prison. Warden Risley was later dismissed by the district court with the Petitioner's consent because he was not even employed at the Prison when the alleged conduct occurred. The pro se complaint for relief asked for monetary damages, injunctive relief and declaratory relief involving dental care at the State Prison. The parties both moved for summary judgment and the Defendants prevailed on their motion for summary judgment.

The magistrate found from the pleadings and discovery that there was not a deliberate indifference on

behalf of the Defendants to warrant a trial because there had been no violation of the Eighth Amendment. A de novo review by the United States District Judge resulted in the motion for summary judgment being granted and judgment entered in favor of the Defendants. An appeal to the Ninth Circuit Court of Appeals, unreported opinion of May 3, 1986, upheld the granting of the summary judgment in favor of the Defendants. A long and torturous letter writing and pleading campaign by the Petitioner occurred which has now finally resulted in a petition for certiorari to this Court.

REASONS FOR DENYING THE WRIT

A. The case does not merit review.

This case really involves only one narrow issue: Did the Petitioner ever show a series of facts that

showed a deliberate indifference to a serious or legitimate medical need? This Court has already clearly resolved the issue of medical treatment for inmates in the case of Estelle v. Gamble, 429 U.S. 97, 97 S. Ct. 285 (1976). The Court has held that, in order to state a cause of action under Section 42 U.S.C. Section 1983, the Plaintiff must show that the prison officials were deliberately indifferent to a legitimate, serious medical need. The case clearly establishes that, as long as prison officials do not ignore a legitimate medical need, there is no violation of the Eighth Amendment and, therefore, a complaint under the federal Civil Rights Act cannot stand.

A mere difference of opinion between the inmate and prison officials is not sufficient to state a

claim under Section 1983. Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981); Ferranti v. Morgan, 618 F.2d 888 (1st Cir. 1980); McCracken v. Jones, 562 F.2d 22 (10th Cir. 1977) cert. den. 435 U.S. 1917 (1978); Seward v. Hutto, 525 F.2d 1024 (8th Cir. 1975).

Although Estelle involved a medical condition, the Supreme Court's holding has been extended to dental care as well. Finney v. Arkansas Board of Corrections, 505 F.2d 195, 202, (8th Cir. 1974).

B. The decision below does not conflict with any federal court decision.

There are many reported cases that are the result of Estelle, each construing a set of facts of whether or not a deliberate indifference violation has been stated. The Petitioner does not cite a single conflict regarding the real issue

presented here. Every court to consider the question has held that, unless there is a deliberate indifference to a serious medical need by the prison officials, there is no violation of the Eighth Amendment. There is simply no conflict in the circuits on this issue.

C. The decision below is correct.

The task that an inmate has when attempting to file suit under 42 U.S.C. Section 1983 on medical or dental issues is to demonstrate a set of facts that show a deliberate indifference to a serious medical need. Without exception, every court that has reviewed this issue has held that, absent these facts, the complaint should be dismissed. E.g., Kelsey v. Ewing, 652 F.2d 4 (8th Cir. 1981); Mullen v. Smith, 738 F.2d 317 (8th Cir. 1984); Toombs v. Bell, 798

F.2d 297 (8th Cir. 1986).

When it was obvious that the pleadings and the discovery showed that there was not a deliberate indifference to the Petitioner's dental needs, then the matter was ripe for summary judgment. The granting of summary judgment in favor of the Defendants was correct and the Circuit Court clearly recognized that in its decision.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

NICK A. ROTERING
Attorney at Law
Counsel of Record
Montana Department of Institutions
1539 11th Avenue
Helena, Montana 59620
(406) 444-3930
August, 1987